

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. M18-0012
18201500877**

JEFFREY D’AMBRA

DECISION

PER CURIAM: Before this Panel on September 25, 2019—Magistrate Goulart (Chair), Administrative Magistrate Abbate, and Magistrate Noonan, sitting—is Jeffrey D’Ambra’s (Appellant) appeal from a decision of Judge Arthur G. Capaldi (Trial Judge) of the Coventry Municipal Court, sustaining the charged violation of G.L. 1956 § 31-16-2, “Manner of turning at intersection.” Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On May 21, 2018, Officer Visinho of the Coventry Police Department observed a vehicle on Hopkins Hill Road take a wide right turn at a high rate of speed onto Tiogue Avenue. (Tr. at 1.) Officer Visinho conducted a motor vehicle stop, identified Appellant as the driver of the vehicle, and issued Appellant a citation for violating § 31-16-2. *Id.*; *see also* Summons No. 18201500877. Appellant pled not guilty to the charged violation, and the matter proceeded to trial on July 24, 2018. (Tr. at 1.); *see also* Appellant’s Notice of Appeal at 2.

Officer Visinho testified first at trial. *Id.* Officer Visinho testified that he was in the left turning lane on Hopkins Hill Road when he observed Appellant proceed northbound on Hopkins

Hill Road and take a right turn onto Tiogue Avenue. *Id.* Officer Visinho testified that Appellant conducted the turn in a wide, fast manner, and that he heard the vehicle's tires squeak. *Id.* at 1-2. Officer Visinho testified that after Appellant made the right turn, he operated his vehicle in the middle of both lanes on Tiogue Avenue, which begins with two lanes before merging into one lane. *Id.* at 3. Officer Visinho also testified that as Appellant made the right turn, his vehicle was approximately eight feet from the right curb on Tiogue Avenue. *Id.* at 3.

Next, Appellant testified. *Id.* at 4. Appellant testified that while traveling in the right lane on Hopkins Hill Road, he took a right turn onto Tiogue Avenue. *Id.* at 4-5. Appellant testified that after turning onto Tiogue Avenue, he "was probably in the middle of the road," but that he did not believe it mattered due to the lack of traffic. *Id.* at 5.

After testimony concluded, the Trial Judge determined that even if Officer Visinho's estimation regarding the distance of Appellant's vehicle from the right curb was not exact, by both Officer Visinho's and Appellant's own testimony, Appellant was nonetheless traveling in the middle of two lanes immediately after taking the right turn onto Tiogue Avenue. *Id.* Accordingly, the Trial Judge found clear and convincing evidence of a violation. *Id.* Pursuant to § 31-27-24, known as the Colin Foote Statute, the Trial Judge imposed a fine of \$500, in addition to sixty hours of driver retraining, sixty hours of community service, and a loss of license for three months. *Id.* at 5-6. Appellant timely filed the instant appeal. *See* Appellant's Notice of Appeal at 1-3.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island

Traffic Tribunal. Section 31-41.1-8(f) provides, in relevant part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Insurance Company v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Environmental Science Corporation v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

A. Appellant's Violation of § 31-16-2

On appeal, Appellant argues that the Trial Judge's decision was "[i]n violation of . . . statutory provisions[]" and "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" Sec. 31-41.1-8(f)(1), (5). Specifically, Appellant contends that he executed the right turn onto Tiogue Avenue at a lawful distance from the curb. *See* Appellant's Notice of Appeal at 2. Additionally, Appellant avers that § 31-16-2 does not proscribe what constitutes an unlawful manner of operating a vehicle *after* a motorist conducts a right turn.

To assess whether there is sufficient evidence in the record to support the charged violation, this Panel must first determine what actions constitute a violation of § 31-16-2. The Rhode Island Supreme Court has consistently held that "when the language of a statute is clear and unambiguous, [the] court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning." *Lehigh Cement Co. v. Quinn*, 173 A.3d 1272, 1276 (R.I. 2017) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). When interpreting a statute, this Panel must "determine and effectuate the Legislature's intent and [] attribute to the enactment the meaning most consistent with its policies or obvious purpose." *Id.* (quoting *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987)).

Here, § 31-16-2 provides, in relevant part: "The driver of a vehicle intending to turn at an intersection shall do so as follows: (1) *Right turns.* (i) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway." The Legislature clearly and unambiguously conveyed its intent to ensure that motorists execute

both the approach for *and* the completion of a right turn in a safe manner. *See* § 31-16-2; *Lehigh Cement Co.*, 173 A.3d at 1276. Therefore, this Panel must review the record and “determine whether the [Trial Judge’s]” finding that Appellant did not complete a right turn in a safe manner as contemplated by § 31-16-2 “is supported by legally competent evidence. . . [.]” *Link*, 633 A.2d at 1348.

In the instant matter, the record indicates that Appellant failed to complete a right turn in the manner proscribed by § 31-16-2. This finding is supported by Officer Visinho’s testimony that Appellant followed through his execution of a right turn at a considerable distance from the right curb, such that he traversed in between two lanes on Tiogue Avenue. (Tr. at 5.) This finding is further supported by Appellant’s own testimony during which he admitted to travelling in between two lanes on Tiogue Avenue after executing the right turn. *Id.*

After thoroughly reviewing the record, this Panel finds that there was sufficient evidence offered at trial to support the Trial Judge’s decision. *See Link*, 633 A.2d at 1348 (citing *Envtl. Sci. Corp.*, 621 A.2d at 208). Accordingly, this Panel finds that the Trial Judge’s decision is not “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” Sec. 31-41.1-8(f).

B. The Trial Judge’s Application of the Colin Foote Statute

Appellant also argues that the Trial Judge’s decision to impose a sentence pursuant to the Colin Foote Statute was in violation of the law. Sec. 31-41.1-8(f)(6); *see also* Appellant’s Notice of Appeal at 2.¹ Appellant contends that § 31-27-24(c), which enumerates specific offenses for which sanctions may imposed, does not include the violation for which he was convicted. *See*

¹ During oral argument, Appellant stated that he contacted the Coventry Municipal Court while his appeal was pending, and conveyed that the Municipal Court removed the sanctions imposed pursuant to the Colin Foote Statute. However, there is no record of this communication of which this Panel is aware.

Appellant's Notice of Appeal at 2.

Section 31-27-24(a) of the Colin Foote Statute reads, in relevant part:

“Every person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars (\$1,000), and shall be ordered to attend sixty (60) hours of driver retraining, shall be ordered to perform sixty (60) hours of public community service, and the person's operator license in this state may be suspended up to one year or revoked by the court for a period of up to two (2) years.”

As indicated above, the Colin Foote Statute applies only to multiple moving violations. Section 31-27-24(c) specifically enumerates eleven offenses that are considered moving violations pursuant to the statute, which are

- “(1) 31-13-4. Obedience to devices.
- “(2) 31-14-1. Reasonable and prudent speeds.
- “(3) 31-14-2. Prima facie limits.
- “(4) 31-14-3. Conditions requiring reduced speeds.
- “(5) 31-15-5. Overtaking on the right.
- “(6) 31-15-11. Laned roadways.
- “(7) 31-15-12. Interval between vehicles.
- “(8) 31-15-16. Use of emergency break-down lane for travel.
- “(9) 31-17-4. Vehicle entering stop or yield intersection.
- “(10) 31-20-9. Obedience to stop signs.
- “(11) 31-27.1-3. ‘Aggressive driving’ defined.”

In the instant matter, sanctions pursuant to the Colin Foote Statute are not appropriate. First, Appellant's driving record indicates that his sustained violation of § 31-16-2 does not fall within the eighteen-month period required for the Colin Foote Statute to apply. *See* Appellant's Driving Record at 1. Second, Appellant's sustained violation of § 31-16-2, “Manner of turning at intersection,” is not a specifically enumerated moving violation pursuant to the Colin Foote Statute. *See* § 31-27-24(c). Therefore, this Panel finds the Trial Judge's decision to impose sanctions pursuant to the Colin Foote Statute to be in violation of the statutory provision. *See* § 31-41.1-8(f)(1).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision sustaining the violation of § 31-16-2 was neither in violation of statutory provisions nor clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(1), (5). The substantial rights of the Appellant have not been prejudiced. Accordingly, that portion of Appellant's appeal is denied, and the charged violation is sustained.

However, this Panel finds the Trial Judge's decision to impose sanctions pursuant to the Colin Foote Statute to be in violation of the statutory provision. *See* § 31-41.1-8(f)(1). Accordingly, this matter is remanded for sentencing consistent with the decision of this Panel.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Administrative Magistrate Joseph A. Abbate

Magistrate William T. Noonan

DATE: _____